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VIA ECF
and EMAIL to (Failla_NYSDChambers@nysd.uscourts.gov)

Honorable Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

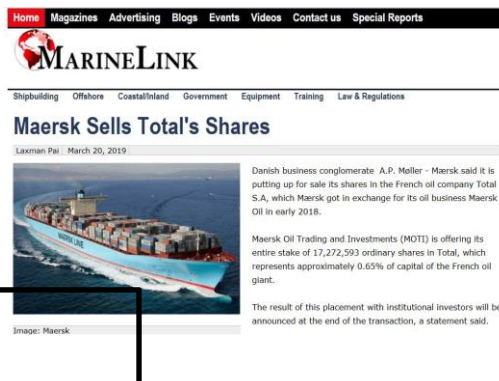
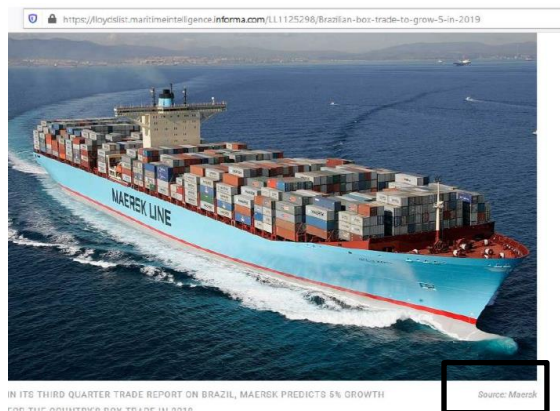
Re: ***Simon J. Burchett Photography, Inc. v. A.P. Moller Maersk A/S*, 1:2019-cv-01576
Plaintiff's Intent to Seek to Withdraw Notice of Dismissal and Amend the
Complaint**

Your Honor:

I represent the plaintiff in the above matter and write to update the Court on the status of the above-referenced matter. On March 25, 2018 plaintiff submitted a letter to the Court requesting to voluntarily dismiss this matter due to the fact that the U.S. Copyright Registration for the image at issue had not been issued as of that date. (Dkt. No. 13.) After the March 25, 2018 letter, the U.S., Copyright Registration for the image at issue was granted. Based on this Court prior precedent, this Court need not dismiss the claims, but, in its discretion, may allow plaintiff to amend the Complaint once a Registration has been received. See *Laine v. Pride*, No. 09 Civ. 3057, 2010 U.S. Dist. Lexis3657, 2010 WL 199927, at *45 (S.D.N.Y. Jan. 19, 2010); *J. Racenstein & Co., Inc. v. Wallace*, No. 96 Civ. 9222, 1997 U.S. Dist. Lexis14928, 1997 WL 605107, at *1 (S.D.N.Y. Oct. 1, 1997) ("Where an action is commenced without registration being effected, the defect can be cured by subsequent registration, and an appropriate amendment to the complaint may be made . . ."); *Demetriades v. Kaufmann*, 680 F. Supp. 658, 661, 62 (S.D.N.Y. 1988) (permitting plaintiff, "in the interests of substantial justice," to amend complaint based on subsequent issuance of certificate of copyright registration where litigation was commenced while application was pending).

Not only has the relevant U.S. Copyright Office registration issued, but a substantial amount of pertinent facts have come to light since the last round of letters. Multiple United States based third-

parties have informed plaintiff that they obtained licenses/permission to use plaintiff's copyrighted images directly from defendant A.P. Moller Maersk. See e.g.:



One of the preceding copyrighted images is not at issue in this matter; yet. Maersk has also continued to publicly display plaintiff's copyrighted images without a license.

Due to the additional copyrighted image(s) now at issue, and the continued licensing by Maersk of the plaintiff's copyrighted image at issue, plaintiff respectfully requests to withdraw the prior request to file a Notice of Dismissal pursuant to Fed.R.C.P. 41, and instead amend the operative complaint to reflect the substantial set of new relevant facts. Plaintiff has yet to speak with counsel for the defendant on these issues, but will notify the Court immediately after the parties meet and confer.

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By: Richard M. Garbarini
Richard M. Garbarini

cc: Defendant via ECF.